IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 131 OF 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
M/S.SHRENIK MAHENDRABHAI - Opponent(s)

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Appearance :
SHRI MANISH R. BHATT for Applicant(s).
NONE for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/11/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income Tax Appellate Tribunal, Ahmedabad Bench `A', at the instance of the Revenue, has referred

the following question under Section-256(1) of the Income Tax Act, 1961 (hereinafter referred to as `the Act' for short) for the opinion of this Court, which arises out of Income Tax Appeal No.1382/Ahd/1990 pertaining to the Assessment Year 1986-87:

> *"Whether the Appellate Tribunal is right in law and on facts in directing the Assistant Commissioner of Income-Tax to extend all benefits under the Amnesty Scheme?"*

2. For convenience, we are taking the facts from the order of reference. The facts in a nutshell are that the Assessee, an individual, was living with his brother, Shri Sanjay M. Shah, at 5-A, Vishram Flats, Behind High Court, Navrangpura, Ahmedabad. An operation of search was conducted on 25th April, 1986 and 26th April, 1986 on the basis of a warrant issued against Shri Sanjay M. Shah. Certain incriminating articles were found at the time of search and the same were accordingly seized. It is to be noted that no warrant was issued against the interest of the Assessee, nor any search was made against him nor any seizure was effected from his possession. After the search, the Assessee filed the return of income under the Amnesty Scheme, the learned Income Tax Officer accepted the income declared by the Assessee, but, refused to

allow the benefits of the Amnesty Scheme on the ground that the case on hand was a case of search and seizure. The Income Tax Officer referred to Question No.12, which finds place in Circular No.451 issued by the Union of India on 17th February, 1986, the question reads as under:

> *"Question No.12: Can immunity given by the Circular be availed of by the assessee whose premises have been searched by the tax authorities?*
> *Answer : No."*

2.1 Being aggrieved by the said order, the Assessee preferred an appeal to the Commissioner of Income-Tax (Appeals), after considering the pros and cons, the CIT (Appeals) allowed the appeal and observed that the Assessee was entitled to the benefits flowing from the Amnesty Scheme.

2.2 Being dissatisfied with the order passed by the CIT (Appeals), the Revenue took up the matter to the Tribunal, which confirmed the order.

3. Shri Bhatt, learned Counsel for the Revenue, submits that present is a case of search and seizure and under the circumstances, the Income Tax Officer was

absolutely justified in refusing the benefits flowing from the Amnesty Scheme. According to him, the Tribunal did not properly appreciate the facts of the case and arrived to an illegal finding.

4. Question No.12 and its findings, referred to above, clearly show that any person, whose premises have been searched by the Tax Authorities would not be entitled to any immunity under the Amnesty Scheme. Undisputedly, no search warrant was issued against the interest of the Assessee. The premises where the Assessee was living were also the premises where his brother, Shri Sanjay M. Shah, was residing. If the premises where Shri Sanjay M. Shah was residing, were sought to be searched then, simply because the Assessee was living with him, would not make the search binding against the interest of the present Assessee. Shri Sanjay M. Shah and the present-Assessee are different identities and entities and in the facts of the case, we would be justified in observing that no search or seizure was made or effected against the interest of the Assessee. If there was no search or seizure, nor there was detection of any matter, which could be said to be incriminating, then, the benefits flowing from the Amnesty Scheme could not be denied. The Tribunal was absolutely justified in holding

in favour of the Assessee. The question referred to us is answered in the affirmative, in favour of the Assessee and against the Revenue. The Reference stands disposed of. No costs.

[***R.S.Garg, J.***]

[***D. H. Waghela, J.***]

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